

ONE WHO CAN BE APPOINTED AS GOVERNOR

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Yesternoon during the course of a discussion on who can be appointed as Governor of a Province, a question arose whether a person after once having been appointed as such, is eligible for reappointment in the same capacity for another term. One view was that he stands disqualified for such appointment, on account of having served in that capacity within a period of two years. Since the exponents of this view were seriously in contention and adamant to take the opposite view, examination of the question will be worth its while.

2. Reliance in support was placed by them on Article 101 (2) of the Constitution which provides that a person shall not be appointed a Governor unless he is qualified to be elected as a member of the National Assembly and is not less than thirty five years of age.

3. Reference was then made to Article 63(1) (k) which lays down that a person shall be disqualified from being elected or chosen as, and from being, a member of the Parliament if he has been in the Service of Pakistan or of any Statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest unless a period of two years has elapsed since he ceased to be in such service.

4. From their point of view, the provisions of Article 260 are also in point, in so far as it defines the expression "Service of Pakistan". It means any Service, post or office in connection with the affairs of the Federation or of a Province, and includes an All Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of Majlis-i-Shoora (Parliament) or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Attorney General, Advocate General, Parliamentary Secretary or Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister or member of a House or a Provincial Assembly.

5. In the context of these provisions, while pointing out that service as Governor being a Service of Pakistan within the constitutional definition of this expression, the argument was that after once having served as Governor within two years, a person became disqualified under Article 63(1)(k) of the Constitution from being elected or chosen as, and from being a member of the Parliament and that this disability being 'au fond', the provisions of Article 101 (2) constitute a bar, square and substantial, in the way of his fresh appointment as Governor, evidently because he was no longer qualified to be elected as a member of the National Assembly.

6. I am in respectful disagreement. The opposite view, namely that he is not so disqualified, is sound, even though it may seemingly be paradoxical. For a correct exposition of the Legislature's intention, the provisions of Articles 63(1)(k) and 101 (2) have to be juxtaposed with those of Article 62 of the Constitution, which speak of the qualifications for membership of the Parliament. On the basis of a closer application, what I maintain is that Article 101 (2) has got reference to the provisions of Article 62 which deals with qualifications and not to those of Article 63 of the Constitution which are in respect of disqualifications.

7. Article 101(2) says that a person shall not be appointed a Governor unless he is qualified to be elected as a member of the National assembly. These qualifications find place in Article 62 which lays down as to what a person has to be or should possess, for being eligible to be elected or chosen as a member of the Parliament. The difference between Article 62 and 63 is that one is in respect of positive qualifications whereas the other pertains to disqualifications of a person from being elected or chosen as a member of the National Assembly. Distinction between these articles is quite clear and tangible. They were placed on the Statute Book to convey different messages and serve different purposes. The expression "a person shall not be qualified to be elected or chosen as a member of the Parliament unless" used in Article 62 in synonymous with and would serve the same purpose as "a person shall be qualified to be elected or chosen as a member of the Parliament only if" he is in possession of the qualifications mentioned there. There is palpable distinction

between "shall not be qualified" of Article 62 and "shall be disqualified" of Article 63 of the Constitution. One is in respect of positive qualification whereas the other involves negation and is prohibitory in character.

8. And there should absolutely be no doubt about the proposition that, to be eligible for appointment as a Governor, all what is required by a person in terms of article 101 (2) is that he should be qualified to be member of the National Assembly. For a search of those qualifications, we will have to have recourse not to the provisions of Article 63 but to those of Article 62 which inter alia speaks of his being a citizen of Pakistan and of good character, sagacious, righteous, non-profligate, honest and amin.

9. We might as well examine the matter from another aspect. If the argument in respect of the other view be taken as sound, the result will be rather strange. A person who was qualified, to start with, under Article 101 (2) to be appointed as Governor on the strength of being qualified to be elected or chosen as a member of the Parliament, incurred a disqualification for being so elected or chosen under Article 63(1)(k) on account of having remained in Service of Pakistan as Governor. The result, if the argument is accepted as sound, would be that he can neither be elected or chosen as a member, nor he can be appointed as Governor. If it is taken still further to its logical conclusion, he cannot be elected as a member because he has once been a Governor and he cannot be appointed as Governor because of having already once been so within two years. This can certainly not be the Legislature's intention. Provisions of Article 63(1)(k) can by no means be allowed to cut both ways. If a person incurs a disqualification from being a member by reason of having been a Governor, there is no reason why this disqualification should be allowed to stand in the way of his reappointment in the same capacity.

10. Yet another aspect is worth notice. As already pointed out before, Articles 62 and 63 have different import, connotation and were embodied in the Constitution to serve different purposes; which, amongst other things, is evident from the fact that they have been enacted separately. It suggests that a person can be qualified to be elected as member of the Parliament under Article 62 and disqualified from being so elected or chosen within the meaning of Article 63, all at the same time. If this had not been the Legislature's intention, the draftsman could have put all the things of these two articles in one article and also have had the advantage of avoiding an adverse criticism that enactment of two separate articles was the result of his neurotic fuss. I can explain my point by giving an illustration of how the provisions of Article 63(1)(k) could be incorporated into those of Article 62 of the Constitution.

11. This amalgamation would have given us the following reading of Article 62: A person shall be qualified to be elected or chosen as a member of parliament only if, (a) he is a citizen of Pakistan; and (b) he has not been in the Service of Pakistan or of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest, within two years of the time at which he files his nomination papers for election as member of the Parliament.

12. What with Articles 62 and 63, the Legislature's intention can be gathered from the provisions of Article 101 (2) itself. It says that "a person shall not be appointed a Governor unless he is qualified to be elected as a member of the National Assembly. If it was meant to have nexus with both Articles 62 and 63, it would have been made to say that a person shall not be appointed a Governor, unless he is qualified under Article 62 and not disqualified under Article 63 to be elected as member of the National Assembly.

13. In this view of the matter, the correct constitutional position is that provisions of Article 63(1)(k) are irrelevant in so far as the appointment of a Governor is concerned and a person, though disqualified from being elected or chosen as a member of the Parliament under this clause, will nonetheless be qualified for appointment as Governor even within two years of the conclusion of his previous service as such, without involving either any contradiction in terms or offence against those provisions. The argument in support of the opposite view appears to be rather fallacious and its exponents are reading something in the relevant provisions of the Constitution which in fact is not there.